



# Committee on Justice Initiatives

## The State Bar's Work Continues

Hon. Cynthia Diane Stephens and Richard D. McLellan

We have high expectations and aspirations for our justice system. We want it to be both efficient and predictable in resolving disputes, while giving individual attention to every person's case. Our belief is that the justice system should wisely husband our resources even as it is accessible to all. In 2005, the State Bar adopted its vision for Michigan's justice system (see sidebar).

Needless to say, our system of justice does not fully meet those expectations or aspirations. Americans are disappointed at the gap between what is and what should be. In beauty salons and barber shops, grocery stores, and classrooms we describe our concern and then say, "Somebody should do something about it!"

The Committee on Justice Initiatives (CJI) is the organized bar's agent to close the gap between our aspirations and reality. The nearly 120 volunteers who participate in our four initiatives and work groups gear their considerable energy, intellect, and goodwill toward specific aspects of the delivery of justice system services.

This article traces the genesis of CJI as the culmination of many years of committed labor by State Bar leaders.

### **The Forerunners and the Open Justice Commission**

The CJI can trace its lineage at least back to 1986 when Chief Justice G. Mennen Williams established the Citizens Commission on Courts. The Chief Justice, Chair Justice Patricia Boyle, and their colleagues were determined to give the owners of the justice system—the people—an opportunity to evaluate it in an organized fashion. Comprised of a true cross-section of Michigan residents, the Commission on Courts reported a high level of confidence in the justice system as a whole but found that it

cost too much and took too long. It also reported a widespread perception of institutional race, ethnic, and gender bias in our courts. The Supreme Court undertook a number of efforts in response, including creating case disposition guidelines. In 1987, the Court went further by creating two special bodies: the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts.

The twin task forces spent a year examining why women and minorities had less confidence in the justice system than white men. Led by 1987 State Bar President Julia Darlow and Judge Harold Hood, the women and men on the task forces heard testimony from many sources at hearings from Marquette to Detroit. Task force members also raised the money necessary to execute their goals. The reports of the task forces were presented to the Court and the public in 1989. Many of the task forces' recommendations led to immediate action, including creation of the Domestic Violence Task Force (and later State Bar committee), aggressive recruiting of women and minority faculty for the Michigan Justice Institute, and the creation of effective liaisons with the tribal courts. However, one key recommendation, the creation of an institutionalized entity to address the gaps between aspiration and reality, was not acted upon.

In 1997, President Victoria Roberts, currently a judge of the United States District Court for the Eastern District of Michigan, commissioned a State Bar task force to review the 1989 reports and make recommendations. Former U.S. Attorney Saul Green and Dawn Van Hoek of the State Appellate Defender's Office shepherded this painstaking effort. They reviewed the progress on each of the recommendations in the earlier reports and noted:

*We have laid the groundwork for a renewed statewide commitment to the elimination of bias. We now look to both the State Bar of Michigan and Michigan Supreme Court to provide that crucial leadership. As the most significant first step, and our most important recommendation, the Task Force urges the creation of a Joint Commission on Diversity Issues and the Michigan Justice System, established by the State Bar of Michigan and Michigan Supreme Court to serve on a permanent basis. This Joint Commission should both monitor and work toward accomplishment of the 1989 recommendations, while also expanding the scope of inquiry into new problem areas of racial, ethnic and gender bias which are identified after investigation. It is our unanimous conclusion that without such a commission, Michigan is unlikely to see continued and coordinated progress.*

In 1999, the Open Justice Commission was created with a five-year term. Judge Hood again provided leadership with Justice Marilyn Kelly. The Open Justice Commission was charged with: (1) raising awareness of open justice issues and the impact of the task forces' subjects of concern upon fair delivery of justice; (2) reducing or eliminating bias or discrimination in the courts and in the legal profession; and (3) increasing public confidence in the fairness of the legal profession and the equal application of law for all.

The Commission accomplished much during its short life. The award-winning Pro Bono Domestic Violence training was a significant product of its cooperative efforts. It also produced the recently published *Juvenile Justice Handbook*. In 2002, the National Consortium of Task Forces and Commissions on Racial and Ethnic Fairness in the Courts met in Michigan due to the efforts of the Commission.

### **The State Bar of Michigan recognizes the following hallmarks of an open, fair, and accessible justice system:**

1. Adequate, diversified, and sustained resources exist to provide meaningful access to justice and to prevent, remove, or reduce barriers to the justice system.
2. A full range of services is available in a consistent, prompt, understandable, high-quality, and affordable manner.
3. A coordinated statewide system delivers services to juveniles and adults in a manner that considers the impact of the civil and criminal justice system on the clients they each serve.
4. User-friendly technology is available to all justice stakeholders to fairly and efficiently maximize access to justice.
5. The justice system is inclusive and meets the legal needs of a diverse population.
6. The justice system promotes collaboration among key constituents to meet the legal needs of the public.
7. Public legal education creates an informed public and helps those who must proceed without a lawyer, or with a court-appointed lawyer.
8. The highest and best use of all resources is made so that duplication is avoided, capacity is developed, and quality is assured.
9. Bar leaders make access to justice a visible priority and have a high level of involvement working toward that priority.
10. The justice system recognizes that establishing and maintaining a fair and accessible system is the responsibility of every lawyer and every institutional participant in the system.

### **The Task Force on Access to Justice for All**

The CJI can also trace its roots to the State Bar's Task Force on Access to Justice for All (ATJ Task Force), which was established by the State Bar in 1996 under the leadership of President Tom Kienbaum, who named Hon. Victoria Roberts as the task force's first chair. Creation of this task force was the overarching recommendation of *The Michigan Plan: A State-based Plan for Civil Legal Services*, produced through the collaborative efforts of the State Bar, the State Bar Foundation, and civil legal services programs.

The ATJ Task Force was also a long-time objective of former State Bar President and Foundation Trustee John W. Cumiskey, who advocated that it would showcase the leadership role that the organized bar should have in access to justice and that it would be an "umbrella" to bring together key stakeholders to promote cooperation and coordination. The ATJ Task Force was drawn from the State Bar leadership, the Foundation, and legal service providers. In 1997, the State Bar finalized its planning effort, including Access to Justice in its list of 10 goals. The State Bar added a number of staff positions to support the work of the ATJ Task Force through committees in four areas: pro bono, technology, service delivery, and resource development.

In 1998, the ATJ Task Force saw two significant developments. It won the American Bar Association's Harrison Tweed Award for its extraordinary actions to support access to justice and its approach to

doing this in partnership with key stakeholders. Second, the ATJ Task Force recommended a statewide fundraising campaign to increase resources for civil legal aid services to the poor in Michigan. Discussions among the legal aid programs, the State Bar, and the Bar Foundation resulted in working together to design an ATJ campaign, which would include a permanent endowment that could grow to provide future income for civil legal aid services. The State Bar provides staffing to solicit donations that are received and managed by the Michigan State Bar Foundation, a 502(c)(3) charity that holds the ATJ Fund and makes distributions and grants from it to support civil legal aid for the poor. To date, more than \$6 million in contributions, pledges, and planned gifts have been received by the ATJ Fund.

**in·i·tia·tive (ĭ-nĭsh'ə-tĭv): n. The power or ability to begin or to follow through energetically with a plan or task; enterprise and determination.**

The goal of raising significant private funds to support civil legal aid was boldly announced in 1998 by then ATJ Task Force Chair Al Butzbaugh, 1999–2000 State Bar president and current Berrien County Circuit judge. This project and the other work of the task force was also continued by its next two chairs, former State Bar President Reginald Turner and Charlotte Johnson. Additionally, it was under the access to justice mantle that the pro bono guidelines were strengthened. The State Bar's Pro Bono Committee, in cooperation with the ATJ Task Force, marshaled thousands of hours in service to the legally underrepresented in our state.

### The Formation of CJI

The ATJ Task Force and the Open Justice Commission operated on often intertwining paths for several years. At the same time, many of the committees of the State Bar and special and local purpose bar associations devoted considerable time and efforts addressing access and fairness issues. Occasionally, two or more organizations or committees without knowledge of one another were attacking the same issue. After a thorough strategic planning process, President Scott Brinkmeyer charted our present course: to strive for a qualitatively improved justice system service through a single, albeit multi-faceted committee. Initially called the Standing Committee on Justice Initiatives, CJI was given the following charge:

*... promote the effective delivery of high quality legal services to all Michigan citizens, and to assure that barriers are reduced so that the justice system is the strongest possible, equal and fair in its application to all.*

The CJI was thus charged with being the body to act on behalf of the organized bar to coordinate efforts to do something about the gap between our ideal justice system and the system within which we function. The CJI was to become the State Bar entity to address the issues raised in reports from the task forces on Gender Issues in the Courts and Racial/Ethnic Issues in the Courts, as well as reports from the Citizens Commission on Courts.

Organized in 2004, the CJI was a blend of the Access to Justice Task Force, the Pro Bono and Legal Aid Committees, and the Open Justice Commission. The CJI intensely discussed the best organizational format to accomplish its current task and respond to the changing environment. In 2005, the committee began operation through four initiatives: Resource Development, Pro Bono, Justice Policy, and Equal Access (see flowchart). Each of these initiatives has an article in this issue of the *Journal*.

The initial structure of the CJI did not address the criminal aspect of the committee's charge. Linda Rexer, executive director of the Michigan State Bar Foundation, facilitated a Criminal Issues Workgroup that made recommendations for inclusion of criminal issues in the committee's work. The workgroup's members considered and reviewed the efforts of other people and institutions in the criminal arena. They recognized the leadership of Senator Alan Cropsy, who has led the efforts of the legislature to address both the quality and cost of criminal indigent legal services. They received input from external institutions like the State Planning Body and the Prison Re-entry Task Force, which are working on similar issues. They also interfaced with several sections and committees of the State Bar that are focused on criminal issues. The workgroup's members recommended the creation of a Criminal Issues Initiative within the CJI that would have as its principal focus criminal legal services and the civil consequences of criminal convictions. The State Bar Board of Commissioners approved that recommendation and the new initiative will begin its work in the 2006–2007 bar year.

An African folktale describes the nature of our work. The story recounts two men fishing on the bank of a river. They spy an infant in a basket in the river. After they retrieve the frightened child, another floats by and yet another. As one of the fishermen grabs a child from the river, the other runs upstream. The first fisherman shouts to the other to come back. The running fisherman replies, "You stay down here and save them. I'm going upstream to see where they are coming from."

Somebody should! ♦



*Judge Cynthia Diane Stephens was appointed in 1985 to the Third Circuit Court of Michigan. She has served as its chief judge pro tempore and as chair of the Mediation Tribunal Association. Her State Bar service includes membership in the Open Justice Commission, the Executive Committee of the State Bar Board of Commissioners, and the Race and Ethnic Bias and Professionalism Task Forces, and serving as chair of the Communications Committee.*



*Richard D. McLellan is a member of Dykema Gossett and head of the firm's government policy department. He is chairman of the Michigan Law Revision Commission by appointment of the Michigan Legislature. The Supreme Court appointed him to the State Bar Board of Commissioners and he serves as a member of the Michigan Film Advisory Commission. He formerly served as chairman of the Michigan Corrections Commission and director of the Office of Drug Abuse.*

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*\*To be replaced by the Criminal Issues Initiative in September 2006.*